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NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATIONCHAPTER 2. CORPORATIONS COMMISSION
FIXED UTILITIES

PREAMBLE

1. Sections Affected

Article 16
R14-2-1601
R14-2-1602
R14-2-1603
R14-2-1604
R14-2-1605
R14-2-1606
R14-2-1607
R14-2-1608
R14-2-1609
R14-2-1610
R14-2-1611
R14-2-1612
R14-2-1613
R14-2-1614
R14-2-1615
R14-2-1616

Rulemaking Action

New Article
New Section
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Arizona Corporation Commission

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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

A.R.S. §§ 40-202, 40-203, 40-250, 40-321, 40-322, 40-331, 40-332, 40-336, 40-361, 40-365, 40-367, and under A.R.S., Title 40, generally.

Authorizing statute: Arizona Constitution, Article XV

Implementing statute: Not applicable

3. The effective date of the rules:

December 26, 1996

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Exempt Rulemaking:
2 A.A.R. 4400, November 1, 1996

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Gary Yaquinto, Director, Utilities Division
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2. kW and kWh sales to consumers, disaggregated by customer class (for example, residential, commercial, industrial);
 3. Solar energy sales (kWh) and sources for grid connected solar resources; kW capacity for off-grid solar resources;
 4. Revenues from sales by customer class (for example, residential, commercial, industrial);
 5. Number of retail customers disaggregated as follows: aggregators, residential, commercial under 100 kW, commercial 100 kW to 2999 kW, commercial 3000 kW or more, industrial less than 3000 kW, industrial 3000 kW or more, agricultural (if not included in commercial), and other;
 6. Retail kWh sales and revenues disaggregated by term of the contract (less than 1 year, 1 to 4 years, longer than 4 years), and by type of service (for example, firm, interruptible, other);
 7. Amount of and revenues from each service provided under R14-2-1605, and, if applicable, R14-2-1606;
 8. Value of all Arizona specific assets and accumulated depreciation;
 9. Tabulation of Arizona electric generation plants owned by the Electric Service Provider broken down by generation technology, fuel type, and generation capacity;
 10. Other data requested by staff or the Commission;
 11. In addition, prior to the date indicated in R14-2-1604(D), Affected Utilities shall provide data demonstrating compliance with the requirements of R14-2-1604.
- B. Reporting Schedule**
1. For the period through December 31, 2003, semi-annual reports shall be due on April 15 (covering the previous period of July through December) and October 15 (covering the previous period of January through June). The first such report shall cover the period January 1 through June 30, 1999.
 2. For the period after December 31, 2003, annual reports shall be due on April 15 (covering the previous period of January through December). The 1st such report shall cover the period January 1 through December 31, 2004.
- C. The information listed above may be provided on a confidential basis. However, staff or the Commission may issue reports with aggregate statistics based on confidential information that do not disclose data pertaining to a particular seller or purchases by a particular buyer.**
- D. Any Electric Service Provider governed by this Article which fails to file the above data in a timely manner may be subject to a penalty imposed by the Commission or may have its Certificate rescinded by the Commission.**
- E. Any Electric Service Provider holding a Certificate pursuant to this Article shall report to the Director of the Utilities Division the discontinuation of any competitive tariff as soon as practicable after the decision to discontinue offering service is made.**
- F. In addition to the above reporting requirements, Electric Service Providers governed by this Article shall participate in Commission workshops or other forums whose purpose is to evaluate competition or assess market issues.**
- G. Reports filed under the provisions of this section shall be submitted in written format and in electronic format. Electric Service Providers shall coordinate with the Commission staff on formats.**
- R14-2-1615. Administrative Requirements**
- A. Any Electric Service Provider certificated under this Article may propose additional electric services at any time by filing a proposed tariff with the Commission describing the service, maximum rates, terms and conditions. The proposed new electrical service may not be provided until the Commission has approved the tariff.**
 - B. Contracts filed pursuant to this Article shall not be open to public inspection or made public except on order of the Commission, or by the Commission or a Commissioner in the course of a hearing or proceeding.**
 - C. The Commission may consider variations or exemptions from the terms or requirements of any of the rules in this Article upon the application of an affected party. The application must set forth the reasons why the public interest will be served by the variation or exemption from the Commission rules and regulations. Any variation or exemption granted shall require an order of the Commission. Where a conflict exists between these rules and an approved tariff or order of the Commission, the provisions of the approved tariff or order of the Commission shall apply.**
 - D. The Commission may develop procedures for resolving disputes regarding implementation of retail electric competition.**
- R14-2-1616. Legal Issues**
- A. A working group to identify, analyze, and provide recommendations to the Commission on legal issues relevant to this Article shall be established.**
 - 1. The working group shall commence activities within 15 days of the date of adoption of this Article.**
 - 2. Members of the working group shall include representatives of staff, the Residential Utility Consumer Office, consumers, utilities, and other Electric Service Providers. In addition, the Executive and Legislative Branches and the Attorney General shall be invited to send representatives to be members of the working group.**
 - 3. The working group shall be coordinated by the Director of the Legal Division of the Commission or by his or her designee.**
 - B. The working group shall submit to the Commission a report on the activities and recommendations of the working group no later than 90 days prior to the date indicated in R14-2-1602.**
 - C. The Commission shall consider the recommendations and decide what actions, if any, to take based on the recommendations.**

- C. Prior to the date indicated in R14-2-1604(D), competitively negotiated contracts governed by this Article customized to individual customers which comply with approved tariffs do not require further Commission approval. However, all such contracts whose term is 1 year or more and for service of 1 MW or more must be filed with the Director of the Utilities Division as soon as practicable. If a contract does not comply with the provisions of this Article it shall not become effective without a Commission order.
- D. Contracts entered into on or after the date indicated in R14-2-1604(D) which comply with approved tariffs need not be filed with the Director of the Utilities Division. If a contract does not comply with the provisions of this Article it shall not become effective without a Commission order.
- E. An Electric Service Provider holding a Certificate pursuant to this Article may price its competitive services, as defined in R14-2-1605, at or below the maximum rates specified in its filed tariff, provided that the price is not less than the marginal cost of providing the service.
- F. Requests for changes in maximum rates or changes in terms and conditions of previously approved tariffs may be filed. Such changes become effective only upon Commission approval.

R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements

- A. Except as indicated elsewhere in this Article, R14-2-201 through R14-2-212, inclusive, are adopted in this Article by reference. However, where the term "utility" is used in R14-2-201 through R14-2-212, the term "utility" shall pertain to Electric Service Providers providing the services described in each paragraph of R14-2-201 through R14-2-212. R14-2-212(G)(2) shall pertain only to Affected Utilities. R14-2-212(G)(4) shall apply only to Affected Utilities. R14-2-212(H) shall pertain only to Electric Service Providers who providedistribution service.
- B. The following shall not apply to this Article:
 - 1. R14-2-202 in its entirety.
 - 2. R14-2-212(F)(1).
 - 3. R14-2-213.
- C. No consumer shall be deemed to have changed suppliers of any service authorized in this Article (including changes from supply by the Affected Utility to another supplier) without written authorization by the consumer for service from the new supplier. If a consumer is switched to a different ("new") supplier without such written authorization, the new supplier shall cause service by the previous supplier to be resumed and the new supplier shall bear all costs associated with switching the consumer back to the previous supplier.
- D. Each Electric Service Provider providing service governed by this Article shall be responsible for meeting applicable reliability standards and shall work cooperatively with other companies with whom it has interconnections, directly or indirectly, to ensure safe, reliable electric service.
- E. Each Electric Service Provider shall provide at least 30 days notice to all of its affected consumers if it is no longer obtaining generation, transmission, distribution, or ancillary services necessitating that the consumer obtain service from another supplier of generation, transmission, distribution, or ancillary services.
- F. All Electric Service Providers rendering service under this Article shall submit accident reports as required in R14-2-101.
- G. An Electric Service Provider providing firm electric service governed by this Article shall make reasonable efforts to reestablish service within the shortest possible time when service interruptions occur and shall work cooperatively with other

- companies to ensure timely restoration of service where facilities are not under the control of the Electric Service Provider.
- H. Each Electric Service Provider shall ensure that bills rendered on its behalf include the toll free telephone numbers for billing, service, and safety inquiries and the telephone number of the Consumer Services Section of the Arizona Corporation Commission Utilities Division. Each Electric Service Provider shall ensure that billing and collection services rendered on its behalf comply with R14-2-1613(A) and (B).
- I. Additional Provisions for Metering and Meter Reading Services
 - 1. An Electric Service Provider who provides metering or meter reading services pertaining to a particular consumer shall provide access to meter readings to other Electric Service Providers serving that same consumer.
 - 2. A consumer or an Electric Service Provider relying on metering information provided by another Electric Service Provider may request a meter test according to the tariff on file and approved by the Commission. However, if the meter is found to be in error by more than 3%, no meter testing fee will be charged.
 - 3. Protocols for metering shall be developed subsequent to the workshops described in R14-2-1606(I).
- J. Working Group on System Reliability and Safety
 - 1. If it has not already done so, the Commission shall establish, by separate order, a working group to monitor and review system reliability and safety.
 - a. The working group may establish technical advisory panels to assist it.
 - b. The working group shall commence activities within 15 days of the date of adoption of this Article.
 - c. Members of the working group shall include representatives of staff, consumers, the Residential Utility Consumer Office, utilities, other Electric Service Providers and organizations promoting energy efficiency. In addition, the Executive and Legislative Branches shall be invited to send representatives to be members of the working group.
 - d. The working group shall be coordinated by the Director of the Utilities Division of the Commission or by his or her designee.
 - 2. All Electric Service Providers governed by this Article shall cooperate and participate in any investigation conducted by the working group, including provision of data reasonably related to system reliability or safety.
 - 3. The working group shall report to the Commission on system reliability and safety regularly, and shall make recommendations to the Commission regarding improvements to reliability or safety.
- K. Electric Service Providers shall comply with applicable reliability standards and practices established by the Western Systems Coordinating Council and the North American Electric Reliability Council or successor organizations.
- L. Electric Service Providers shall provide notification and informational materials to consumers about competition and consumer choices, such as a standardized description of services, as ordered by the Commission.

R14-2-1614. Reporting Requirements

- A. Reports covering the following items shall be submitted to the Director of the Utilities Division by Affected Utilities and all Electric Service Providers granted a Certificate of Convenience and Necessity pursuant to this Article. These reports shall include the following information pertaining to competitive service offerings, Unbundled Services, and Standard Offer services in Arizona:
 - 1. Type of services offered;

related mechanisms to recover the applicable pro-rata costs of System Benefits from all consumers located in the Affected Utility's service area who participate in the competitive market. In addition, the Affected Utility may file for a change in the System Benefits charge at any time. The amount collected annually through the System Benefits charge shall be sufficient to fund the Affected Utilities' present Commission-approved low income, demand side management, environmental, renewables, and nuclear power plant decommissioning programs.

- B. Each Affected Utility shall provide adequate supporting documentation for its proposed rates for System Benefits.
- C. An Affected Utility shall recover the costs of System Benefits only upon hearing and approval by the Commission of the recovery charge and mechanism. The Commission may combine its review of System Benefits charges with its review of filings pursuant to R14-2-1606.
- D. Methods of calculating System Benefits charges shall be included in the workshops described in R14-2-1606(f).

R14-2-1609. Solar Portfolio Standard

- A. Starting on January 1, 1999, any Electric Service Provider selling electricity under the provisions of this Article must derive at least 1/2 of 1% of the total retail energy sold competitively from new solar resources, whether that solar energy is purchased or generated by the seller. Solar resources include photovoltaic resources and solar thermal resources that generate electricity. New solar resources are those installed on or after January 1, 1997.
- B. Solar portfolio standard after December 31, 2001:
 - 1. Starting on January 1, 2002, any Electric Service Provider selling electricity under the provisions of this Article must derive at least 1% of the total retail energy sold competitively from new solar resources, whether that solar energy is purchased or generated by the seller. Solar resources include photovoltaic resources and solar thermal resources that generate electricity. New solar resources are those installed on or after January 1, 1997.
 - 2. The Commission may change the solar portfolio percentage applicable after December 31, 2001, taking into account, among other factors, the costs of producing solar electricity and the costs of fossil fuel for conventional power plants.
- C. Any Electric Service Provider certificated under the provisions of this Article shall be able to credit 2 times the electric energy it generated, or caused to be generated under contract, before January 1, 1999 using photovoltaics or solar thermal resources installed on or after January 1, 1997, in Arizona to the electric energy requirements of R14-2-1609(A) or (B).
- D. Electric Service Providers selling electricity under the provisions of this Article shall provide reports on sales and solar power as required in this Article, clearly demonstrating the output of solar resources, the installation date of solar resources, and the transmission of energy from those solar resources to Arizona consumers. The Commission may conduct necessary monitoring to ensure the accuracy of these data.
- E. If an Electric Service Provider selling electricity under the provisions of this Article fails to meet the requirement in R14-2-1609(A) or (B) in any year, the Commission may impose a penalty on that Electric Service Provider up to 30¢ per kWh for deficiencies in the provision of solar energy. In addition, if the provision of solar energy is consistently deficient, the Commission may void an Electric Service Provider's contracts negotiated under this Article.
- F. Photovoltaic or solar thermal resources that are located on the consumer's premises shall count toward the solar portfolio

standard applicable to the current Electric Service Provider serving that consumer.

- G. The solar portfolio standard described in this section is in addition to renewable resource goals for Affected Utilities established in Decision No. 58643.

R14-2-1610. Spot Markets and Independent System Operation

- A. The Commission shall conduct an inquiry into spot market development and independent system operation for the transmission system.
- B. The Commission may support development of a spot market or independent system operator or operators for the transmission system.
- C. The Commission may work with other entities to help establish spot markets and independent system operators.

R14-2-1611. In-state Reciprocity

- A. The service territories of Arizona electric utilities which are not Affected Utilities shall not be open to competition under the provisions of this Article, nor shall Arizona electric utilities which are not Affected Utilities be able to compete for sales in the service territories of the Affected Utilities.
- B. An Arizona electric utility, subject to the jurisdiction of the Commission, which is not an Affected Utility may voluntarily participate under the provisions of this Article if it makes its service territory available for competing sellers, if it agrees to all of the requirements of this Article, and if it obtains an appropriate Certificate of Convenience and Necessity.
- C. An Arizona electric utility, not subject to the jurisdiction of the Commission, may submit a statement to the Commission that it voluntarily opens its service territory for competing sellers in a manner similar to the provisions of this Article. Such statement shall be accompanied by the electric utility's nondiscriminatory Standard Offer Tariff, electric supply tariffs, Unbundled Services rates, Stranded Cost charges, System Benefits charges, Distribution Services charges and any other applicable tariffs and policies for services the electric utility offers, for which these rules otherwise require compliance by Affected Utilities or Electric Service Providers. Such filings shall serve as authorization for such electric utility to utilize the Commission's Rules of Practice and Procedure and other applicable rules concerning any complaint that an Affected Utility or Electric Service Provider is violating any provision of this Article or is otherwise discriminating against the filing electric utility or failing to provide just and reasonable rates in tariffs filed under this Article.
- D. If an electric utility is an Arizona political subdivision or municipal corporation, then the existing service territory of such electric utility shall be deemed open to competition if the political subdivision or municipality has entered into an intergovernmental agreement with the Commission that establishes nondiscriminatory terms and conditions for Distribution Services and other Unbundled Services, provides a procedure for complaints arising therefrom, and provides for reciprocity with Affected Utilities. The Commission shall conduct a hearing to consider any such intergovernmental agreement.

R14-2-1612. Rates

- A. Market determined rates for competitively provided services as defined in R14-2-1605 shall be deemed to be just and reasonable.
- B. Each Electric Service Provider selling services under this Article shall have on file with the Commission tariffs describing such services and maximum rates for those services, but the services may not be provided until the Commission has approved the tariffs.

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3. Such rates may be downwardly flexible if approved by the Commission.
- H. Electric Service Providers offering services under this R14-2-1606 shall provide adequate supporting documentation for their proposed rates. Where rates are approved by another jurisdiction, such as the Federal Energy Regulatory Commission, those rates shall be provided to this Commission.
- I. Within 90 days of the adoption of this Article, the Commission staff shall commence a series of workshops to explore issues in the provision of Unbundled Service and Standard Offer service.
 1. Parties to be invited to participate in the workshops shall include utilities, consumers, organizations promoting energy efficiency, and other Electric Service Providers.
 2. Among the issues to be reviewed in the workshops are: metering requirements; metering protocols; designation of appropriate test years; the nature of adjustments to test year data; de-averaging of rates; service characteristics such as voltage levels; revenue uncertainty; line extension policies; and the need for performance bonds.
 3. A report shall be submitted to the Commission by the staff on the activities and recommendations of the participants in the workshops not later than 60 days prior to the date indicated in R14-2-1602. The Commission shall consider any recommendations regarding Unbundled Service and Standard Offer service tariffs.

R14-2-1607. Recovery of Stranded Cost of Affected Utilities

- A. The Affected Utilities shall take every feasible, cost-effective measure to mitigate or offset Stranded Cost by means such as expanding wholesale or retail markets, or offering a wider scope of services for profit, among others.
- B. The Commission shall allow recovery of unmitigated Stranded Cost by Affected Utilities.
- C. A working group to develop recommendations for the analysis and recovery of Stranded Cost shall be established.
 1. The working group shall commence activities within 15 days of the date of adoption of this Article.
 2. Members of the working group shall include representatives of staff, the Residential Utility Consumer Office, consumers, utilities, and other Electric Service Providers. In addition, the Executive and Legislative Branches shall be invited to send representatives to be members of the working group.
 3. The working group shall be coordinated by the Director of the Utilities Division of the Commission or by his or her designee.
- D. In developing its recommendations, the working group shall consider at least the following factors:
 1. The impact of Stranded Cost recovery on the effectiveness of competition;
 2. The impact of Stranded Cost recovery on customers of the Affected Utility who do not participate in the competitive market;
 3. The impact, if any, on the Affected Utility's ability to meet debt obligations;
 4. The impact of Stranded Cost recovery on prices paid by consumers who participate in the competitive market;
 5. The degree to which the Affected Utility has mitigated or offset Stranded Cost;
 6. The degree to which some assets have values in excess of their book values;
 7. Appropriate treatment of negative Stranded Cost;
 8. The time period over which such Stranded Cost charges may be recovered. The Commission shall limit the application of such charges to a specified time period;
 9. The ease of determining the amount of Stranded Cost;
- E. The applicability of Stranded Cost to interruptible customers;
- F. The amount of electricity generated by renewable generating resources owned by the Affected Utility.
- G. The working group shall submit to the Commission a report on the activities and recommendations of the working group no later than 90 days prior to the date indicated in R14-2-1602.
- H. The Commission shall consider the recommendations and decide what actions, if any, to take based on the recommendations.
- I. The Affected Utilities shall file estimates of unmitigated Stranded Cost. Such estimates shall be fully supported by analyses and by records of market transactions undertaken by willing buyers and willing sellers.
- J. An Affected Utility shall request Commission approval of distribution charges or other means of recovering unmitigated Stranded Cost from customers who reduce or terminate service from the Affected Utility as a direct result of competition governed by this Article, or who obtain lower rates from the Affected Utility as a direct result of the competition governed by this Article.
- K. The Commission shall, after hearing and consideration of analyses and recommendations presented by the Affected Utilities, staff, and intervenors, determine for each Affected Utility the magnitude of Stranded Cost, and appropriate Stranded Cost recovery mechanisms and charges. In making its determination of mechanisms and charges, the Commission shall consider at least the following factors:
 1. The impact of Stranded Cost recovery on the effectiveness of competition;
 2. The impact of Stranded Cost recovery on customers of the Affected Utility who do not participate in the competitive market;
 3. The impact, if any, on the Affected Utility's ability to meet debt obligations;
 4. The impact of Stranded Cost recovery on prices paid by consumers who participate in the competitive market;
 5. The degree to which the Affected Utility has mitigated or offset Stranded Cost;
 6. The degree to which some assets have values in excess of their book values;
 7. Appropriate treatment of negative Stranded Cost;
 8. The time period over which such Stranded Cost charges may be recovered. The Commission shall limit the application of such charges to a specified time period;
 9. The ease of determining the amount of Stranded Cost;
 10. The applicability of Stranded Cost to interruptible customers;
 11. The amount of electricity generated by renewable generating resources owned by the Affected Utility.
- L. Stranded Cost may only be recovered from customer purchases made in the competitive market using the provisions of this Article. Any reduction in electricity purchases from an Affected Utility resulting from self-generation, demand side management, or other demand reduction attributable to any cause other than the retail access provisions of this Article shall not be used to calculate or recover any Stranded Cost from a consumer.
- M. The Commission may order an Affected Utility to file estimates of Stranded Cost and mechanisms to recover or, if negative, to refund Stranded Cost.
- N. The Commission may order regular revisions to estimates of the magnitude of Stranded Cost.

R14-2-1608. System Benefits Charges

- A. By the date indicated in R14-2-1602, each Affected Utility shall file for Commission review non-bypassable rates or

the minimum requirements in R14-2-1604(A) and R14-2-1604(B).

4. The Commission staff shall commence a series of workshops on selection issues within 45 days of the adoption of this Article and staff shall submit a report to the Commission discussing the activities and recommendations of participants in the workshops. The report shall be due not later than 90 days prior to the date indicated in R14-2-1602.
- E. Retail consumers served under existing contracts are eligible to participate in the competitive market prior to expiration of the existing contract only if the Affected Utility and the consumer agree that the retail consumer may participate in the competitive market.
- G. An Affected Utility may engage in buy-throughs with individual or aggregated consumers. Any contract for a buy-through effective prior to the date indicated in R14-2-1604(A) must be approved by the Commission.
- H. Schedule Modifications for Cooperatives
 1. An electric cooperative may request that the Commission modify the schedule described in R14-2-1604(A) through (D) so as to preserve the tax exempt status of the cooperative or to allow time to modify contractual arrangements pertaining to delivery of power supplies and associated loans.
 2. As part of the request, the cooperative shall propose methods to enhance consumer choice among generation resources.
 3. The Commission shall consider whether the benefits of modifying the schedule exceed the costs of modifying the schedule.

R14-2-1605. Competitive Services

A properly certificated Electric Service Provider may offer any of the following services under bilateral or multilateral contracts with retail consumers:

- A. Generation of electricity from generators at any location whether owned by the Electric Service Provider or purchased from another generator or wholesaler of electric generation.
- B. Any service described in R14-2-1606, except Distribution Service and except services required by the Federal Energy Regulatory Commission to be monopoly services. Billing and collection services and information services do not require a Certificate of Convenience and Necessity.

R14-2-1606. Services Required to be Made Available by Affected Utilities

- A. Until the Commission determines that competition has been substantially implemented for a particular class of consumers (residential, commercial, industrial) so that all consumers in that class have an opportunity to participate in the competitive market, and until all Stranded Costs pertaining to that class of customers have been recovered, each Affected Utility shall make available to all consumers in that class in its service area, as defined on the date indicated in R14-2-1602, Standard Offer bundled generation, transmission, ancillary, distribution, and other necessary services at regulated rates.
 1. An Affected Utility may request that the Commission determine that competition has been substantially implemented to allow discontinuation of Standard Offer service and shall provide sufficient documentation to support its request.
 2. The Commission may, on its own motion, investigate whether competition has been substantially implemented and whether Standard Offer service may be discontinued.

B. Standard Offer Tariffs

1. By the date indicated in R14-2-1602, each Affected Utility may file proposed tariffs to provide Standard Offer Bundled Service and such rates shall not become effective until approved by the Commission. If no such tariffs are filed, rates and services in existence as of the date in R14-2-1602 shall constitute the Standard Offer.
2. Affected Utilities may file proposed revisions to such rates. It is the expectation of the Commission that the rates for Standard Offer service will not increase, relative to existing rates, as a result of allowing competition. Any rate increase proposed by an Affected Utility for Standard Offer service must be fully justified through a rate case proceeding.
3. Such rates shall reflect the costs of providing the service.
4. Consumers receiving Standard Offer service are eligible for potential future rate reductions authorized by the Commission, such as reductions authorized in Decision No. 59601.

C. By the date indicated in R14-2-1602, each Affected Utility shall file Unbundled Service tariffs to provide the services listed below to all eligible purchasers on a nondiscriminatory basis:

1. Distribution Service;
2. Metering and meter reading services;
3. Billing and collection services;
4. Open access transmission service (as approved by the Federal Energy Regulatory Commission, if applicable);
5. Ancillary services in accordance with Federal Energy Regulatory Commission Order 888 (III FERC Stats. & Regs. § 31.036, 1996) incorporated by reference;
6. Information services such as provision of customer information to other Electric Service Providers;
7. Other ancillary services necessary for safe and reliable system operation.

D. To manage its risks, an Affected Utility may include in its tariffs deposit requirements and advance payment requirements for Unbundled Services.

E. The Affected Utilities must provide transmission and ancillary services according to the following guidelines:

1. Services must be provided consistent with applicable tariffs filed with the Federal Energy Regulatory Commission.
2. Unless otherwise required by federal regulation, Affected Utilities must accept power and energy delivered to their transmission systems by others and offer transmission and related services comparable to services they provide to themselves.

E. Customer Data

1. Upon authorization by the customer, an Electric Service Provider shall release in a timely and useful manner that customer's demand and energy data for the most recent 12-month period to a customer-specified Electric Service Provider.
2. The Electric Service Provider requesting such customer data shall provide an accurate account number for the customer.
3. The form of data shall be mutually agreed upon by the parties and such data shall not be unreasonably withheld.

G. Rates for Unbundled Services

1. The Commission shall review and approve rates for services listed in R14-2-1606(C) and requirements listed in (D), where it has jurisdiction, before such services can be offered.
2. Such rates shall reflect the costs of providing the services.

R14-2-1603. Certificates of Convenience and Necessity

- A. Any Electric Service Provider intending to supply services described in R14-2-1605 or R-14-2-1606, other than services subject to federal jurisdiction, shall obtain a Certificate of Convenience and Necessity from the Commission pursuant to this Article; however, a Certificate is not required to offer information services or billing and collection services. An Affected Utility does not need to apply for a Certificate of Convenience and Necessity for any service provided as of the date of adoption of this Article within its distribution service territory.
- B. Any company desiring such a Certificate of Convenience and Necessity shall file with the Docket Control Center the required number of copies of an application. Such Certificates shall be restricted to geographical areas served by the Affected Utilities as of the date this Article is adopted and to service areas added under the provisions of R14-2-1611. In support of the request for a Certificate of Convenience and Necessity, the following information must be provided:
1. A description of the electric services which the applicant intends to offer;
 2. The proper name and correct address of the applicant, and
 - a. The full name of the owner if a sole proprietorship,
 - b. The full name of each partner if a partnership,
 - c. A full list of officers and directors if a corporation, or
 - d. A full list of the members if a limited liability corporation;
 3. A tariff for each service to be provided that states the maximum rate and terms and conditions that will apply to the provision of the service;
 4. A description of the applicant's technical ability to obtain and deliver electricity and provide any other proposed services;
 5. Documentation of the financial capability of the applicant to provide the proposed services, including the most recent income statement and balance sheet, the most recent projected income statement, and other pertinent financial information. Audited information shall be provided if available;
 6. A description of the form of ownership (for example, partnership, corporation);
 7. Such other information as the Commission or the staff may request.
- C. At the time of filing for a Certificate of Convenience and Necessity, each applicant shall notify the Affected Utilities in whose service territories it wishes to offer service of the application by serving a complete copy of the application on the Affected Utilities.
- D. The Commission may deny certification to any applicant who:
1. Does not provide the information required by this Article;
 2. Does not possess adequate technical or financial capabilities to provide the proposed services;
 3. Fails to provide a performance bond, if required.
- E. Every Electric Service Provider obtaining a Certificate of Convenience and Necessity under this Article shall obtain certification subject to the following conditions:
1. The Electric Service Provider shall comply with all Commission rules, orders, and other requirements relevant to the provision of electric service and relevant to resource planning;
 2. The Electric Service Provider shall maintain accounts and records as required by the Commission;
 3. The Electric Service Provider shall file with the Director of the Utilities Division all financial and other reports that

the Commission may require and in a form and at such times as the Commission may designate;

4. The Electric Service Provider shall maintain on file with the Commission all current tariffs and any service standards that the Commission shall require;
 5. The Electric Service Provider shall cooperate with any Commission investigation of customer complaints;
 6. The Electric Service Provider shall obtain all necessary permits and licenses;
 7. Failure to comply with any of the above conditions may result in rescission of the Electric Service Provider's Certificate of Convenience and Necessity.
- E. In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the applicant may collect from its customers, or order that such advances or deposits be held in escrow or trust.

R14-2-1604. Competitive Phases

- A. Each Affected Utility shall make available at least 20% of its 1995 system retail peak demand for competitive generation supply to all customer classes (including residential and small commercial consumers) not later than January 1, 1999. If data permit, coincident annual peak demand shall be used; otherwise noncoincident peak data may be used.
1. No more than $\frac{1}{2}$ of the Eligible Demand may be procured by consumers, each of whose total competitive contract demand is greater than 3 MW.
 2. At least 15% of the Eligible Demand shall be reserved for residential consumers.
 3. Aggregation of loads of multiple consumers shall be permitted.
- B. Each Affected Utility shall make available at least 50% of its 1995 system retail peak demand for competitive generation supply to all customer classes (including residential and small commercial consumers) not later than January 1, 2001. If data permit, coincident peak annual demand shall be used; otherwise noncoincident peak data may be used.
1. No more than $\frac{1}{2}$ of the Eligible Demand may be procured by consumers, each of whose total competitive contract demand is greater than 3 MW.
 2. At least 30% of the Eligible Demand shall be reserved for residential consumers.
 3. Aggregation of loads of multiple consumers shall be permitted.
- C. Prior to 2001, no single consumer shall receive more than 20% of the Eligible Demand in a given year in an Affected Utility's service territory.
- D. Each Affected Utility shall make available all of its retail demand for competitive generation supply not later than January 1, 2003.
- E. By the date indicated in R14-2-1602, Affected Utilities shall propose for Commission review and approval how customers will be selected for participation in the competitive market prior to 2003.
1. Possible selection methods are 1st-come, 1st-served; random selection via a lottery among volunteering consumers; or designation of geographic areas.
 2. The method for selecting customers to participate in the competitive market must fairly allow participation by a wide variety of customers of all sizes of loads.
 3. All customers who produce or purchase at least 10% of their annual electricity consumption from photovoltaic or solar thermal resources installed in Arizona after January 1, 1997, shall be selected for participation in the competitive market if those customers apply for participation in the competitive market. Such participants count toward

12. Incorporations by reference and their location in the rules:

Federal Energy Regulatory Commission Order 888 (III FERC Stats. & Regs. § 31,036, 1966): This rule requires that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory service. The rule also permits public utilities and transmitting utilities to seek recovery of legitimate, prudent, and verifiable standard costs associated with providing open access and Federal Power Act section 211 transmission services.

This reference is located in R14-2-1606(C)(5). FERC Order 888 may be found at the Arizona Corporation Commission, Legal Division, 1200 West Washington, Phoenix, Arizona 85007.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATIONS

**CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES**

ARTICLE 16. RETAIL ELECTRIC COMPETITION

Section

- R14-2-1601. Definitions
- R14-2-1602. Filing of Tariffs by Affected Utilities
- R14-2-1603. Certificates of Convenience and Necessity
- R14-2-1604. Competitive Phases
- R14-2-1605. Competitive Services
- R14-2-1606. Services Required to be Made Available by Affected Utilities
- R14-2-1607. Recovery of Stranded Cost of Affected Utilities
- R14-2-1608. System Benefits Charges
- R14-2-1609. Solar Portfolio Standard
- R14-2-1610. Spot Markets and Independent System Operation
- R14-2-1611. In-state Reciprocity
- R14-2-1612. Rates
- R14-2-1613. Service Quality, Consumer Protection, Safety, and Billing Requirements
- R14-2-1614. Reporting Requirements
- R14-2-1615. Administrative Requirements
- R14-2-1616. Legal Issues

ARTICLE 16. RETAIL ELECTRIC COMPETITION

R14-2-1601. Definitions

In this Article, unless the context otherwise requires:

1. "Affected Utilities" means the following public service corporations providing electric service:
Tucson Electric Power Company, Arizona Public Service Company, Citizens Utilities Company, Arizona Electric Power Cooperative, Trico Electric Cooperative, Duncan Valley Electric Cooperative, Graham County Electric Cooperative, Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative, Navopache Electric Cooperative, Ajo Improvement Company, and Morenci Water and Electric Company.
2. "Bundled Service" means electric service provided as a package to the consumer including all generation, transmission, distribution, ancillary, and other services necessary to deliver and measure useful electric energy and power to consumers.
3. "Buy-through" refers to a purchase of electricity by an Affected Utility at wholesale for a particular retail consumer or aggregate of consumers or at the direction of a particular retail consumer or aggregate of consumers.

sumer or aggregate of consumers or at the direction of a particular retail consumer or aggregate of consumers.

4. "Distribution Service" means the delivery of electricity to a retail consumer through wires, transformers, and other devices that are not classified as transmission services subject to the jurisdiction of the Federal Energy Regulatory Commission; Distribution Service excludes meters and meter reading.
5. "Electric Service Provider" means a company supplying, marketing, or brokering at retail any of the services described in R14-2-1605 or R14-2-1606.
6. "Eligible Demand" means the total consumer kilowatts of demand which an Affected Utility must make available to competitive generation under the terms of this Article or the consumer kilowatts of demand provided competitively in an Affected Utility's distribution territory, whichever is greater.
7. "Standard Offer" means Bundled Service offered to all consumers in a designated area at regulated rates.
8. "Stranded Cost" means the verifiable net difference between:
 - a. The value of all the prudent jurisdictional assets and obligations necessary to furnish electricity (such as generating plants, purchased power contracts, fuel contracts, and regulatory assets), acquired or entered into prior to the adoption of this Article, under traditional regulation of Affected Utilities; and
 - b. The market value of those assets and obligations directly attributable to the introduction of competition under this Article.
9. "System Benefits" means Commission-approved utility low income, demand side management, environmental, renewables, and nuclear power plant decommissioning programs.
10. "Unbundled Service" means electric service elements provided and priced separately, including, but not limited to, such service elements as generation, transmission, distribution, and ancillary services. Unbundled Service may be sold to consumers or to other Electric Service Providers.

R14-2-1602. Filing of Tariffs by Affected Utilities

Each Affected Utility shall file tariffs consistent with this Article by December 31, 1997.

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what the law is so it can plan ahead, and sets forth an objective standard which the Commission must follow in doing so. As for CC&Ns, once again it is clear to a person of ordinary intelligence that under the rules, all new CC&Ns will be competitive CC&Ns, and that under the rules there is a clear standard for granting such CC&Ns.

Analysis: The rules as written give the parties a great deal of guidance in terms of what is expected in the new competitive environment. Precise specificity is of course impossible; neither we nor anyone else has the prescience to know exactly what will happen in the future. However, the rules do set adequate standards and processes for dealing with these future uncertainties. We thus do not agree that the rules are impermissibly vague in violation of due process.

Resolution: There is no reason to delay the promulgation of these rules.

3. The proposed rules do not violate equal protection.

Issue: Some parties argue that the rules as proposed do not allow for equal treatment of all members of a recognized class, that class being all entities that provide electric services. The claim is made that the proposed rules treat incumbent monopoly public service corporations differently than they treat such potential competitors as the Salt River Project, municipal corporations, tribal authorities and non-utility generators. According to these comments, these other entities are not subject to any of the obligations of the proposed rules, but are still allowed to reap the benefits of the rules. Such unequal treatment, it is claimed, violates equal protection.

Staff notes that there are serious differences between the incumbent monopoly providers and other potential entrants. Equal protection is satisfied if all persons in a class are treated alike. *Baseball Liquors v. Circle K Corp.*, 129 Ariz. 215, 630 P.2d 38 (Ct.App. 1981), cert den. 454 U.S. 969, 102 S.Ct. 515. Legislation which applies to members of a class, but not to nonmembers of that class, will be upheld under equal protection if the classification is not arbitrary and there is a substantial difference between those within the class and those without. *Farmer v. Killingsworth*, 102 Ariz. 44, 424 P.2d 172 (1967). In this instance, there is one clear difference between the incumbent monopoly providers, and all others: the incumbents' monopoly status. To treat all parties identically under the rules would fail to recognize the incumbents' ability to use their current monopoly status to inhibit the competition these rules are designed to encourage. These proposed rules recognize that electric competition is not a race that begins with all entrants beginning at the starting gate; rather, the incumbents have a significant head start and a full head of steam. The proposed rules treat the incumbents differently because they ARE different. This does not violate equal protection.

Analysis: As pointed out by staff, there are clear reasons why Affected Utilities are treated differently than other entities under these rules. Indeed, it would make no sense to make their treatment identical, because of their differing circumstances. The rules identify those differences and treat the classes fairly based on those differences.

Resolution: There is no reason to delay the promulgation of these rules.

4. Passage of the proposed rules does not constitute an unconstitutional taking.

Issue: Another argument put forth by several parties is that the property rights of regulated utilities enjoy constitutional protection, and therefore the rules constitute an unconstitutional taking of this property. The primary focus of these comments is that because under the rules the Commission possibly may not allow recovery of a utility's entire stranded cost claim, this constitutes a regulatory taking of the utility's property without compensation. Another argument is that the rules confiscate the exclusive rights inherent in existing CC&Ns without compensation.

Staff believes such claims are premature at this time. The rules as written do not take anything; they do not deny any utility recovery of any stranded cost, nor do they grant any new CC&N. What the rules do is set forth a framework wherein a regulated entity claiming to have stranded costs may come before the Commission and seek recovery of those costs. The rules also establish a process wherein potential new entrants may apply for and receive a CC&N. Mere adoption of the rules will not result in any property being taken.

Furthermore, staff argues that in order for a taking to be unconstitutional, it must be done without compensation. The law is well-settled that takings claims are not ripe until the plaintiff has been denied compensation. *Pub. Serv. Comm'n of New Mexico v. City of Albuquerque*, 755 F.Supp. 1494, 1498 (D.N.M. 1991). If a state provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation until it has used the procedure and been denied just compensation. *Williamson Co. Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 195, 105 S.Ct. 3108, 3121 (1985).

Any property that a utility believes has been taken once competition has been implemented under the rules is essentially a stranded cost. The rules allow for stranded cost recovery, and set forth a process wherein utilities can seek recovery of these costs.

Analysis: Mere adoption of these rules does not constitute a taking. Thus claims by parties that the rules constitute an unlawful taking are clearly premature. Losses in value of utility assets as a result of competition would appear to be stranded costs; as the rules set forth a process to allow for the recovery of stranded costs, it seems clear that the rules do not constitute an unconstitutional taking of any utility property.

Resolution: There is no reason to delay the promulgation of these rules.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

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Resolution: There is no reason to delay the promulgation of these rules.

Issue: The rules Violate the Administrative Procedures Act.

The next argument made by the parties is that the Commission in adopting the proposed rules in this manner is violating the Arizona Administrative Procedures Act ("APA"), A.R.S. § 41-1001 et seq. There are 2 prongs to this argument, one being that the rules will clearly not be certified by the Attorney General's office, and the other being that because the Economic Impact Statement ("EIS") accompanying the proposed rules is somehow inadequate, interested persons are not given an adequate opportunity for notice and comment as required in the APA. Both prongs are without merit.

Staff believes that the rules are not subject to Attorney General certification, as they are quite plainly a manifestation of the Commission's ratemaking authority. Clearly, the adoption of the proposed rules will have an impact on rates, something even all the commentators seem to recognize. Such an impact on rates has been recognized as grounds for the Commission's authority to exercise its plenary ratemaking authority through the adoption of rules. Ariz. Corporation Commission v. State ex rel. Woods, 171 Ariz. 286, 295, 830 P.2d 807, 816 (1992). Where rules, such as these, are an exercise of that ratemaking authority, the Attorney General does not have the authority to review and reject them. State ex rel. Corbin v. Ariz. Corporation Commission, 174 Ariz. 216, 219, 848 P.2d 301 (Ct.App. 1992).

Further, staff notes that the Commission is expressly exempted pursuant to A.R.S. § 41-1057 from the requirement of submitting an EIS as set forth in A.R.S. § 41-1055. Under A.R.S. § 41-1057, the Commission is merely required to adopt substantially similar review procedures for its rules. This is what staff has done in this case in preparing the EIS forwarded to the Secretary of State as part of the rulemaking package. Staff thus believes its EIS thus meets the requirements of the APA.

Analysis: We have previously litigated the issue of whether Commission rules involving ratemaking are subject to review and certification by the Attorney general's office. The Courts have been clear in deciding that they are not. Further, we are satisfied that the EIS prepared by staff meets the statutory requirements set forth in A.R.S. § 41-1057.

Resolution: There is no reason to delay the promulgation of these rules.

Issue: The adoption of these rules modifies existing CC&Ns.

Another argument raised by various parties in this proceeding is that the Commission has no authority to enact the rules because the legislature has not afforded the Commission the authority to issue competitive CC&Ns as is contemplated by the rules. According to this argument, the Commission has no authority to promulgate the rules until the legislature grants to the Commission the authority to grant competitive CC&Ns.

Staff urges that the adoption of these rules does not grant to any potential competitor the right to provide electric service. Pursuant to the rules, CC&Ns may be granted to applicants after going through an application process which includes public notice of the application and an opportunity for a hearing. See R14-2-1603. No CC&N is granted merely by the adoption of the rules, and any CC&N granted under these rules is expressly conditional upon numerous factors set forth in the rules. Therefore no additional legislative authority is required for the Commission to promulgate the rules.

Furthermore, staff points out that courts have recognized that the Commission does have the authority to determine when competition is in the public interest and to issue competitive CC&Ns. Arizona v. People's Freight Line, 41 Ariz. 158, 166-67, 16 P.2d 420, 423 (1932); Winslow Gas Co. v. Southern Union Gas Co., 76 Ariz. 383, 385, 265 P.2d 442, 443 (1954). Thus, while staff welcomes a role for the legislature in clarifying this authority, staff believes such authority already exists.

Analysis: The rules as drafted set forth a framework for the introduction of competition into the electric services market in Arizona. As they are merely a framework, the rules do not grant, modify, or delete any new or existing CC&N. The rules do set up a process that must be followed before any such event occurs. All of the objecting parties are anticipated and expected to participate in such process. We are also persuaded by staff's argument that we already have the authority to grant competitive CC&Ns, when the public interest demands it. However, that is an issue that we expect to address again before any competitive CC&Ns are issued.

Resolution: There is no reason to delay the promulgation of these rules.

2. The adoption of the proposed rules does not violate due process.

Issue: Several parties in their comments have observed that the proposed rules as written violate due process because they are impermissibly vague. They argue that the proposed rules defer resolution of too many issues, such as stranded cost and the nature of CC&Ns under the rules, and do not give the affected parties fair warning as to how these and other aspects of the rules will be determined by the Commission.

Staff acknowledges that a statute or rule is impermissibly vague in violation of due process if a) it fails to give a person of ordinary intelligence a reasonable opportunity to know what the law is in order to plan accordingly, or b) it allows arbitrary or discriminatory enforcement by failing to provide an objective standard. Bird v. State, 184 Ariz. 198, 908 P.2d 12 (Ct.App. 1995). However, staff believes the rules as written do not violate this standard. First, in regard to stranded cost recovery, the rules set up a process for utilities claiming to have incurred stranded costs to seek recovery of those costs. The rules set forth several factors for the Commission to consider in determining a utility's stranded cost, and allow the requesting utility to recover the appropriate amount. The rules thus give the utility an opportunity to know

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- C. An Arizona electric utility, not subject to the jurisdiction of the Commission, may submit a statement to the Commission that it voluntarily opens its service territory for competing sellers in a manner similar to the provisions of this Article. Such statement shall be accompanied by the electric utility's nondiscriminatory Standard Offer tariff, electric supply tariffs, Unbundled Services rates, Stranded Cost charges, System Benefits charges, Distribution Services charges and any other applicable tariffs and policies for services the electric utility offers, for which these rules otherwise require compliance by Affected Utilities or Electric Service Providers. Such filings shall serve as authorization for such electric utility to utilize the Commission's Rules of Practice and Procedure and other applicable rules concerning any complaint that an Affected Utility or Electric Service Provider is violating any provision of this Article or is otherwise discriminating against the filing electric utility or failing to provide just and reasonable rates in tariffs filed under this Article.

R14-2-1611(D) has been added to read:

- D. If an electric utility is an Arizona political subdivision or municipal corporation, then the existing service territory of such electric utility shall be deemed open to competition if the political subdivision or municipality has entered into an intergovernmental agreement with the Commission that establishes nondiscriminatory terms and conditions for Distribution Services and other Unbundled Services, provides a procedure for complaints arising therefrom, and provides for reciprocity with Affected Utilities. The Commission shall conduct a hearing to consider any such intergovernmental agreement.

10. A summary of the principal comments and the agency response to them:

A. General legal arguments against the rules.

1. The Commission has the legal right to promulgate these rules.

One primary overriding comment made by the parties is that the Commission has no legal right to adopt these rules. This argument follows several lines of reasoning, the 3 primary ones being that the rules modify or abrogate the regulatory compact; the rules are in violation of the Administrative Procedures Act; and that the Commission does not have the authority to issue, modify or delete a Certificate of Convenience and Necessity without some legislative change.

Issue: The rules are an unlawful modification or abrogation of the regulatory compact.

The basic argument made by the parties regarding the regulatory compact is that there is some sort of "contract" between the state and the incumbent monopoly electric utility, wherein the utility is obligated to supply electricity to all customers who require it at a reasonable cost, and in return, the state agrees to provide the utility with the exclusive right to serve all customers within a defined territory. The argument goes on to assert that since the proposed rules would change the exclusive nature of electric service, the rules unilaterally abrogate or at least modify this contract, and thus the proposed rules cannot be passed.

Staff argues that no such contract has been formed. Generally, a party asserting the formation of a contract by statute must overcome a presumption against such formation, and courts will be cautious both in identifying a contract within the language of a regulatory statute, and in defining the outlines of any contractual obligation. *National R.R. Passenger Corp. v. Atchison, Topeka, and Santa Fe Ry. Co.*, 470 U.S. 451, 466, 105 S.Ct. 1441, 1452 (1985). "[A]bsent some clear indication that the legislature intends to bind itself contractually, the presumption is that 'a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.'" *Id.* at 465-66, 105 S.Ct. at 1451 (quoting *Dodge v. Board of Education of City of Chicago*, 302 U.S. 74, 79, 58 S.Ct. 98, 100 (1937)). In promulgating these proposed rules, the Commission is exercising the legislative discretion flowing from its plenary ratemaking authority. See *Simms v. Round Valley Light & Power*, 80 Ariz. 145, 294 P.2d 378 (1956). The question as to whether particular legislation creates a contractual right begins with an examination of the statute itself. *National R.R. Corp.*, 470 U.S. at 465-66, 105 S.Ct. at 1451. However, a search of the Arizona Constitution reveals no such intent on the part of the State to bind itself. Indeed, the Constitution expressly disfavors monopolies: "[m]onopolies and trusts shall never be allowed in this state . . ." Ariz. Const. Art. XIV, § 15.

Staff further notes that, while the parties cite *Application of Trico Electric Co-operative, Inc.*, 92 Ariz. 373, 377 P.2d 309 (1962) for the proposition that "the state in effect contracts" with a monopoly utility, that language in *Tricois* clearly dicta. Additionally, other cases refer to regulated monopoly as public policy rather than a contractual relationship. See *Ariz. Corporation Commission v. Super. Ct.*, 105 Ariz. 56, 59, 459 P.2d 489 (1969) (regulated monopoly held to be public policy of Arizona); *Winslow Gas Co. v. Southern Union Gas Co.*, 76 Ariz. 373, 385, 265 P.2d 442, 443 (1954) (referring to Arizona's public policy of controlled monopoly); *James P. Paul Water Co. v. Ariz. Corporation Commission*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983) ("It is well established that Arizona's public policy respecting public service corporations . . . is one of regulated monopoly over freewheeling competition.").

In addition, staff points out that it is well established that any alleged contract is subject to modifications in the law. The parties seem to find the source of the regulatory compact in both the Arizona Constitution and the statutes concerning public service corporations. The Constitution clearly provides for changes in the law concerning public service corporations; see Ariz. Const. Art. XV, § 3. Further, any statutes concerning public service corporations may be changed at any time as well. If indeed the Constitution and the statutes have created a contract such as the parties claim, then this possibility for changes in the law must also be a part of that contract.

Analysis: We are not convinced that the regulatory policy of the state has formed any sort of contract with the Affected Utilities. It appears that the former "policy" of regulated monopoly was just that- a policy, made with no intent to bind the state or the Commission. Finally, we recognize, as should the utilities, that such regulatory policies are always subject to change as the economics and technologies of the time also change.

6. **An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

The rules establish the structure and process for the introduction of retail electric competition in the state of Arizona. The rules are designed to allow consumers to select the entity from whom to purchase various services, and to allow electric providers to reach customers who until now have never had the opportunity for such choice. The Corporation Commission has determined that the rules in this Chapter are exempt from the Attorney General certification provisions of the Administrative Procedure Act (A.R.S. § 41-1041) by a court order (State of Arizona v. Corporation Commission, 114 Ariz. Add. Rep. 36 (Ct. App. 1992)).

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

The rules provides procedures and schedules for introducing competition into the provision of electric service. Increased competition in the electric industry is expected to produce several benefits:

- (1) Consumer choice among energy suppliers.
- (2) Greater customization of energy services, especially for larger consumers, regarding time of use rates, interruptible service, contract duration, pricing arrangements, risk management, and so on.
- (3) Greater innovation in technology and greater applications of technological innovations, especially in distributed generation, as a result of incentives in the competitive marketplace.
- (4) Greater application of energy efficiency measures as energy services companies offer packages of electric energy, demand-side management measures, and possibly other services such as building maintenance services.
- (5) Lower prices for electricity due to competitive pressures and to technological, marketing, and organizational innovations that would not occur as rapidly, if at all, in a regulated monopoly environment.

The costs of participating in a competitive market generally involve risk management and information. Examples of possible costs include: the costs of searching out and evaluating alternatives; additional recordkeeping and billing costs associated with deliveries of electricity from suppliers; additional costs of executing, monitoring, and enforcing contracts; and additional costs of maintaining power quality and transmission and generation system reliability.

A competitive market in electricity will benefit small businesses because it increases their choices and tends to lower prices of electric service. However, small businesses must be informed about their choices. The rule indicates that the Commission may undertake educational activities to lower the costs of participating in the competitive market.

Probable costs to the Commission include costs associate with new tasks, such as reviewing applications for competitive Certificates of Convenience and Necessity, and engaging in evidentiary hearings for stranded investment and unbundled tariff filings. However, Commission review of tariff filings should be reduced eventually and costly rate cases will be avoided for competitive services.

Employment opportunities could be enhanced as new energy related companies move into the area or as a result of new business start-ups. However, employees at public utilities could lose their positions through cost cutting measures as the utilities strive to become more cost-competitive.

Implementation of the rules should result in no increased costs to political subdivisions. As an end user of competitive electricity services, a political subdivision may benefit from greater choices of services options and affordable rates. Those political subdivisions which have their own municipal electric utilities may feel pressure to allow competitive electric service.

This restructuring policy is preferred to alternatives considered because it: minimizes administrative complexity; requires minimal information and planning needs a priori; is relatively flexible so that policy could be adjusted mid-course; uses existing institutions, minimizes utility organizational disruption; allows buyers and sellers to enter the market freely; limits market power of incumbent utilities; and minimizes public confusion.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

R14-2-1601 Definitions

The last sentence has been deleted from R14-2-1601.1. The deleted language stated that "In the event that modifications are made to existing law that would allow the application of this Article to the Salt River Project Agricultural Improvement and Power District ("SRP"), then Affected Utilities shall also include SRP."

R14-2-1603 Certificates of Convenience and Necessity

The 2nd sentence of R14-2-1603(B) has been amended to read: "Such Certificates shall be restricted to geographical areas served by the Affected Utilities as of the date this Article is adopted and to service areas added under the provisions of R14-2-1611."

R14-2-1611 In-State Reciprocity

R14-2-1611(C) has been deleted. The remaining subsections have been renumbered and relettered accordingly.

R14-2-1611(D) (now C) has been amended to read: